Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262

eCOMMERCE & TELECOMMUNICATIONS USER GROUP
REPLY COMMENTS

Pursuant to the Wireline Competition Bureau's August 5, 2004 Public Notice in this matter (DA 04-2475),[1] the eCommerce & Telecommunications User Group ("eTUG"), by its attorney, hereby submits its reply comments in the above-referenced proceeding.

eTUG represents the interests of commercial, educational, and governmental end users of electronic commerce, information technologies ("IT"), Internet, and telecommunications products and services. eTUG desires to facilitate, protect, and promote the mutual interests of end users with respect to public policy deliberations in order to achieve quality, cost-effective information and telecommunications systems. Since the vast majority of the telecommunications traffic of large end user American businesses is data, non-switched data services provide a critical link to the success of this

[1] Public Notice, "*Parties Asked to Refresh Record Regarding Reconsideration of Price Cap Performance Review for Local Exchange Carriers Fourth Report and Order and Access Charge Reform Second Report*

nation's economic engines. Business users have repeatedly reminded the Commission that the data access pipes their daily operations depend upon are *not* subject to competition.[2] Since the ILEC's Special Access services are not subject to any meaningful level of facility based competition and have experienced significant upward spiraling rate levels, it is imperative that the Commission use the opportunity provided by its Public Notice to determine if some of these problems can be fixed with improvements to its price cap system.

The release of the Commission's Public Notice is well timed because it creates an excellent opportunity for some long overdue adjustments to be made to its price cap system – changes which that are possibly even more necessary today then when they were being proposed in the late 1990's. A fair and balanced review of the developments of the last six or seven years should result in swift improvements to its price cap system. With the expiration of the Commission's *CALLS Order* less than nine months away, the issues raised in the pending petitions for reconsideration are anything but *moot or irrelevant*.

Intervening Developments

The intervening telecommunications developments for America's major economic engines (that are *not* telecommunications vendors) has not progressed as the Commission had been lead to believe by this country's dominate local exchange carriers. The developments surrounding ILEC special access pricing flexibility can only be extremely disappointing for the Commission. The facility based competition promised

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and Order," CC Docket Nos. 94-1 and 96-262 (Wireline Comp. Bur., Aug. 5, 2004, published at 69 Fed. Reg. 51081 (Aug. 17, 2004).

[2] See the *Ex Parte Presentation* filed on Sept. 21, 2004 by the American Petroleum Institute in RM Docket No. 10593.

by the dominant ILECs has definitely not developed nor has the promised reductions in the rates of the special access services subjected to pricing flexibility. Even more embarrassing for the Commission has to be the almost regular increases in ILEC special access rates. [See Attachment A.]

Price Cap System

AT&T's Supplemental Comments filed in this proceeding largely mirror the views repeatedly expressed by business end users regarding the changes necessary to fix the Commission's price cap system. While reviewing AT&T's comments regarding the problems with the price cap system and in particular its *X-factor*, eTUG was curious as to how the Commission might have been available to assist American businesses as they were experiencing this country's most recent economic recession. The results are startling – ***$5.17*** billion. If the Commission had acted positively on data submitted by the business end user community and non-ILEC carriers in the mid-late 1990's and adjusted the X-factor to 10.5% (up from 6.5%), the price cap rates for those special access services that are still subject to the Commission's price cap system would be lower by 32.3% or $1.7 billion. Over 60% of today's special access services are subject to pricing flexibility despite the fact that there is no meaningful corresponding facility based competition to blunt the ILECs' desire to take advantage of the pricing windfall provided by the Commission's pricing flexibility rules. Had the Commission not relied upon the dominant ILECs' misinformation regarding imminent competition, a reduction of those rates to the 10.5% X-factor adjusted levels just discussed would result in the pricing flexibility special access rates being reduced by 43.1% or $3.47 billion. Total savings for American end user businesses would be roughly ***$5.17 billion***. [See Attachment B.]

Such savings in telecommunications costs could have provided America's economic engines with some much needed assistance during this most recent recession.

VI. Conclusion

For the reasons stated above, eTUG believes that the Commission should certainly not view as moot or irrelevant the concerns raised by business end users and those contained in AT&T's reconsideration petition. With the less than nine months remaining before the expiration of the CALLS Order, swift and thoughtful Commission action is urgently needed to fix its price cap system.

Respectfully submitted,

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October 1, 2004

ATTACHMENT A

September 2, 2004

Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *In the Matter of AT&T Corp. Petition for Rulemaking To Reform Regulation Of Incumbent Local Exchange Carrier Rates For Interstate Special Access Services*, RM Docket No. 10593.

Dear Chairman Powell,

On August 16, 2004, Qwest filed Transmittal No. 206, significantly increasing its special access prices across the board (approximately 26%). This is now the third time in less than two years and the second time in six months that Qwest increased rates for special access services in MSAs where it has received Phase II pricing flexibility. The major customers of interstate special access (including large end users and wireless carriers) have repeatedly demonstrated to the FCC that over 90% of their network connection can *only* be filed by ILEC special access services. As the Attachment 1 chart shows, prices for rate elements under price caps are now significantly, (for some rate elements as much as 50%), lower than those sought by Qwest under Phase II pricing flexibility. Given the FCC's prediction in it's Pricing Flexibility Order that competition would constrain pricing in areas where competition existed, Qwest's recent action as well as the pricing action of all the other Bell Companies since the inception of pricing flexibility (Attachment 2) indicates that the exact opposite has in fact occurred.

The Special Access Reform Coalition (SPARC) represents captive customers (including end users, wireless service providers, CLECs, & IXCs) of ILEC special access services. SPARC fails to understand how the FCC can allow this situation to continue, particularly since the FCC's own data clearly demonstrates how egregious the situation has become. Earnings on these services are reaching astronomical proportions, with rates of return as high as 69%. It is now time for the FCC to act. These outrageous and anticompetitive prices must not be allowed to continue indefinitely. Since the FCC has yet again allowed another set of massive special access increases to take effect because they seemingly comply with the FCC's mistaken rules, the FCC should immediately act consistent with our previous ex parte filings in this proceeding and reduce special access prices to reasonable levels.

Sincerely,

Brian R. Moir
SPARC Chairman
(202) 331-9852

Attachments

cc:

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Attachment 1

Qwest Current Price Cap vs. Proposed Price Flex Rates

Rate Element	Current Price Cap Rate	Price Flex Proposed Rate	Percent Increase
DS1 Channel Terminations (monthly)	$120.00	$175.00	46%
DS1 Mileage per mile (0 - 8)	$9.00	$16.00	78%
DS3 Channel Terminations (monthly)	$1,400.00	$2,200.00	57%
DS3 Mileage per mile (0 - 8)	$41.00	$85.00	107%
DS3 Mileage Fixed (0 - 8)	$330.00	$650.00	97%
DS3 SHNS OC3-OC48 OV 0	$150.00	$225.00	50%
DS3 SHNS OC3-OC48 OV 0	$150.00	$225.00	50%
DS3 SHNS OC3-OC48 OV 0	$150.00	$225.00	50%
OC12 25-50 MILES	$200.00	$225.00	13%
OC3 8-25 MILES	$100.00	$225.00	125%
OC24 0-8 MILES	$200.00	$475.00	138%
OC3 25-50 FIXED	$578.00	$1,200.00	108%
OC3 8-25 FIXED	$578.00	$1,200.00	108%
OC3 CO NODE	$1,550.00	$3,000.00	94%
OC3 CO NODE	$1,550.00	$3,000.00	94%
OC3 CO NODE	$1,550.00	$3,000.00	94%
SHNS A.N. CAP 155.52 MBPS	$1,750.00	$3,200.00	83%
SHNS A.N. CAP 155.52 MBPS	$1,750.00	$3,200.00	83%
SHNS H.N. CAP 155.52 MBPS	$1,750.00	$3,200.00	83%
SHNS H.N. CAP 155.52 MBPS	$1,750.00	$3,200.00	83%
OC24 0-8 FIXED	$1,650.00	$4,500.00	173%
SHNS A.N. CAP 622.08 MBPS	$3,690.00	$5,300.00	44%
SHNS A.N. CAP 622.08 MBPS	$3,690.00	$5,300.00	44%
SHNS H.N. CAP 622.08 MBPS	$3,690.00	$5,300.00	44%
SHNS H.N. CAP 622.08 MBPS	$3,690.00	$5,300.00	44%
OC24 REMOTE NODE, PER CUST PREM	$4,400.00	$6,950.00	58%
OC24 REMOTE NODE, PER CUST PREM	$4,400.00	$6,950.00	58%
OC24 CO NODE	$5,500.00	$7,500.00	36%
OC24 CO NODE	$5,500.00	$7,500.00	36%
OC48 CO NODE	$8,000.00	$9,800.00	23%
SHNS A.N. CAP 2.488 GBPS-BASE NODE	$8,000.00	$10,100.00	26%
OC48 REM NODE, PER CUST PREM	$7,400.00	$10,200.00	38%

Attachment 2

Special Access Rate Comparisons

	DSO	DS1	DS3
Ameritech	14.1 - 19.6%	8.2-11.6%	14.1-15.0%
BellSouth	1.3 – 3.1%	13.7%	30.6%
PacBell	17.9 – 21.5%	-3.6%	22.4%
Qwest	32.4-122.2%	27.9-28.6%	10.7%
SBC	25.4 - 41.6%	0%	20.1%
Verizon (North)	49.3 - 57.4%	20.8 –30.4%	10.9-11.2%
Verizon (South)	51.0 - 60.8%	19.5%	31.5%

5 Year Term Commitment/10 mile circuit, Price Cap vs. Price Flex

Rates may vary by state

Attachment 2

Special Access Rate Comparisons

	DSO	DS1	DS3
Ameritech	4.5 - 25.3%	0.4 – 1.2%	2.1 – 2.2%
BellSouth	1.5 – 1.7%	5.3%	14.1%
PacBell	17.9 – 21.5%	27.3%	16.1%
Qwest	32.3-122.2%	28.2-29.0%	8.3%
SBC	17.9 – 43.0.%	15.3%	1.8%
Verizon (North)	49.8 - 57.4%	20.8 –30.4%	17.2%
Verizon (South)	35.7 – 62.6%	23.3%	45.4%

Month to Month/10 mile circuit, Price Flex vs. Price Cap

Rates vary by state

ATTACHMENT B

Assumptions:

- Price cap rates for special access should be reduced by 32.3% based on a higher X-factor (10.5%) form 1997 to 2004.
- Conservatively, deregulated rates (those subject to pricing flexibility) for special access are on average about 19% above corresponding price cap rates. This is based on taking a simple average of the price differentials associated with pricing out 10 mile circuits at RBOC levels in effect on 7/1/04. [Rates have already increased significantly since then as reflected in Attachment A.] According to these price outs, month-to-month deregulated special access rates were on average 18.9% higher than price cap rates, while five-year term deregulated rates were on average 19.5% higher than price cap rates.
- For the RBOCs & Sprint, 39.5% of special access revenue in 2003 was still under price caps, while the other 60.5% was deregulated. [Additional services have been deregulated since 2003.]

Potential special access reductions that could result in savings for American businesses:

- Special access revenues for the RBOCs & Sprint were $13.29 billion in 2003.
- Of these, $5.25 billion was under price caps. A reduction in price caps rates by 32.3% (as a result of an X-factor increased from 6.5% to 10.5%) would amount to a $1.7 billion reduction in telecommunications costs for captive American businesses.
- The other $8.04 billion of special access revenues was deregulated (i.e., subject to pricing flexibility). A reduction of these rates to the same level as that of the adjusted (i.e., 10.5% X-factor) price cap rates would result in 43.1% lower rates amounting to a $3.47 billion reduction. [The 43.1% figure is based on the proposition that deregulated rates are currently no less than 119% of price cap rates & should be reduced to a level that is at least 67.7% of current price cap rates.]
- Special access reductions resulting from a properly adjusted X-factor would then total ***$5.17 billion***.
- By comparison, rate reductions resulting from a re-initialization of the existing bloated special access rates to 11.25% ROR levels based on 2003 FCC ARMIS data would be in the range of $5.8 billion. [Given that the FCC's 11.25% ROR is woefully out of date & that present cost of capital data would produce a ROR in the range of 8.5%, even a computation based on a 11.25% ROR would extremely generous to the dominant ILECs that have yet to face any of the meaningful levels of competition that the typical American business faces daily.]